IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

*MONDAY, THE 4TH DECEMBER,2006/13TH AGRAHAYANA, 1928

WP(C).No. 27265 of 2006(U)

AGAINST THE ORDER IN IA 800 / 2006 IN
OS.186/2002 of MUNSIFF COURT, QUILANDY

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PETITIONER:

KIZHAKKALIL EDATHIL BALAKRISHNAN NAIR,
S/O.LAKSHMIKUTTY AMMA,
AGED 73 YEARS, RESIDING AT THANATHIL MADATHIL,
KINALUR AMSOM, MUNDAKKARA DESOM,
KOYILANDY TALUK.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENT:-

THENATHIL K.E.MOHANDAS,
S/O.MEENAKSHI ALIAS SREEDEVI KETTILAMMA,
RESIDING AT THIYYAKKANDY CHALIL,
KINALUR AMSOM, DESOM,
KOYILANDY TALUK.

BY ADV. SRI.B.KRISHNA MANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.27265 OF 2006

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Dated this the 4th day of December,2006

JUDGMENT

Petitioner is the plaintiff. Respondent is the defendant in O.S.186/02 on the file of Munsiff Court, Koyilandy. Suit was filed seeking a decree for permanent prohibitory injunction. In the suit, a Commission was taken out. Commissioner submitted the report. Thereafter on the basis of the report, petitioner filed an application under Order VI Rule 17 of Code of Civil Procedure to amend the plaint. It was objected to by the respondent. It was dismissed. Thereafter petitioner filed I.A.800/06 an application under Order XXIII Rule 1 of Code of Civil Procedure to withdraw the suit with liberty to file fresh suit. Under Ext.P2 order learned Munsiff dismissed the application. This petition is filed under Article 227 of the Constitution of India challenging that order.

2. Learned counsel appearing for petitioner

and respondent were heard.

3. The arguments of learned counsel appearing for petitioner was that in view of the dismissal of the application for amendment of the plaint, no purpose will be served by proceeding with the suit and petitioner was advised that he could file a comprehensive suit after withdrawing the suit and therefore permission may be granted as sought for in I.A.800/06. The argument of learned counsel appearing for respondent is that the petitioner had amended the plaint once and again attempted to amend the plaint which was disallowed by the court and court also found that attempt is to change the suit properties and therefore the cause of action alleged in the plaint cannot be the same as the properties are different and hence the permission sought for cannot be granted and rightly rejected by the Munsiff.

4. On hearing learned counsel appearing for petitioner and respondent, I find that the

petitioner is entitled to get the permission sought for. Case of petitioner is that no purpose will be achieved by proceeding with the suit as framed and hence a comprehensive suit is to be filed. It is a sufficient reason to grant permission sought for as provided under Rule 1 of Order XXIII. Ext.P2 order is quashed. Petition is allowed. Petitioner is permitted to withdraw the suit with liberty to institute a fresh comprehensive suit.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006